

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition for Rulemaking to Prohibit</b>	)	
<b>In-Person Distribution of Handsets to</b>	)	
<b>Prospective Lifeline Customers</b>	)	
	)	
<b>Lifeline and Link Up Reform</b>	)	<b>WC Docket No. 11-42</b>
<b>And Modernization</b>	)	
	)	
<b>Lifeline and Link Up</b>	)	<b>WC Docket No. 03-109</b>
	)	
<b>Federal-State Joint Board on Universal</b>	)	<b>CC Docket No. 96-45</b>
<b>Service</b>	)	

**COMPTTEL’S OPPOSITION TO  
TRACFONE’S PETITION FOR RULEMAKING**

COMPTTEL, through undersigned counsel, hereby submits its opposition to TracFone Wireless, Inc.’s (“TracFone”) Petition for Rulemaking filed in the above-referenced dockets. TracFone asks the Commission to open a rulemaking “for the purpose of amending its rules to prohibit in-person distribution of handsets to prospective Lifeline customers.”<sup>1</sup> TracFone alleges that the primary purpose of its proposed rule would be to prevent waste, fraud and abuse of universal service funds and that the secondary purpose would be to “improve the perception of the Lifeline program in the face of program critics who have called for its elimination.”<sup>2</sup> However admirable TracFone’s intentions may be, its proposal to have the Commission ban the distribution of Lifeline wireless handsets by any means other than U.S. mail or “overnight

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<sup>1</sup> TracFone Petition for Rulemaking at 1.

<sup>2</sup> *Id.*

delivery service”<sup>3</sup> goes too far, will do nothing to advance the Commission’s goal of ensuring that only eligible applicants receive Lifeline benefits, and is likely to frustrate the ability of many otherwise eligible Lifeline applicants to obtain service. For these reasons, TracFone’s Petition For Rulemaking should be denied.

**I. The Lifeline Reforms Adopted by the Commission Have Substantially Mitigated Inefficiencies and Abuse and Will Continue To Do So Without A Rule Prohibiting In-Person Distribution of Handsets To Prospective Customers**

Last year, the Commission adopted significant changes to its Lifeline rules to minimize inefficiencies and abuse in the program.<sup>4</sup> Those reforms include new requirements that eligible telecommunications carrier (“ETCs”) (1) confirm and verify an applicant’s eligibility for Lifeline benefits at the time of enrollment and before applying for reimbursement by accessing an official source of eligibility data (such as a state database), receiving notice from a state administrator that a consumer is eligible, or reviewing subscriber provided documentation of eligibility; (2) obtain a certification from applicants that they understand and will comply with the Lifeline program rules; and (3) annually recertify that their Lifeline subscribers remain eligible for program benefits.<sup>5</sup> The reforms are working. They led to almost \$214 million in savings in 2012.<sup>6</sup> In addition, the first annual recertification process resulted in 29% of subscribers who were enrolled in the Lifeline program in June 2012 being de-enrolled either because they were no longer eligible to participate or because they failed to respond to attempts to recertify their

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<sup>3</sup> *Id.* at 7.

<sup>4</sup> *In The Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“*Lifeline Order*”).

<sup>5</sup> *Id.*; 47 C.F.R. §§ 54.404, 54.405, 54.407, 54.409, 54.410, 54.416.

<sup>6</sup> Public Notice, Wireline Competition Bureau Issues Final Report on Lifeline Program Savings Target, WC Docket No. 11-42, DA 13-130 (rel. Jan. 13, 2012).

eligibility.<sup>7</sup> The recertification requirement is projected to result in \$400 million in savings in 2013.<sup>8</sup>

TracFone contends that a rule prohibiting in-person distribution of handsets to prospective Lifeline customers is necessary to “improve the perception of the Lifeline program in the face of program critics who have called for its elimination, often in light of press reports of unscrupulous providers and irresponsible agents who have been recorded literally handing out handsets on street corners with no apparent efforts to verify the consumers Lifeline eligibility.”<sup>9</sup> As TracFone is well aware, the Lifeline program does not fund the cost of handsets. As a result, there is a serious question as to whether the Commission even has jurisdiction to mandate how handsets may or may not be delivered to consumers. TracFone has cited no authority pursuant to which the Commission may regulate the delivery of handsets to Lifeline consumers. For this reason alone, the Commission should deny TracFone’s Petition.

Moreover, by TracFone’s own admission, the issue that critics have raised is not the in-person distribution of handsets, but the seeming failure of certain providers to verify a consumer’s eligibility for Lifeline benefits. On that score, as Acting Chairwoman Clyburn recently noted, the perception of the Lifeline program has also been marred by unscrupulous providers and agents that have *shipped* handsets to dead people.<sup>10</sup> Acting Chairwoman Clyburn stated that those attacking the Lifeline program are “assert[ing] that the USF is supporting

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<sup>7</sup> Public Notice, Wireline Competition Bureau Announces Results of the 2012 Annual Lifeline Recertification Process, WC Docket No. 11-42, DA 13-872 (rel. Apr. 25, 2013). As the Commission noted, a “non-response does not necessarily indicate that a subscriber was ineligible at the time of enrollment or at the time of the annual verification.”

<sup>8</sup> *Id.*

<sup>9</sup> TracFone Petition at 1.

<sup>10</sup> See e.g., Ben Turriss, “2 Dead People Got Free Phones, and 1 GOP Lawmaker Eyes an Opening,” available at

multiple, free cell phones to the poor, and that carriers are not checking the qualifications of recipients, *or worse, sending phones to those who are deceased.*”<sup>11</sup> Consistent with the Lifeline reforms adopted by the Commission, she made clear, however, that “even if a phone is shipped to a deceased person or if a consumer has failed to show their eligibility, this is *not* a Lifeline-supported engagement and providers must not extract money from the Fund.”<sup>12</sup>

The Commission’s rules prohibit an ETC from requesting Lifeline reimbursement from the Universal Service Administration Company (“USAC”) for any consumer whose eligibility (or continuing eligibility) for program benefits has not been verified.<sup>13</sup> In the *Lifeline* Order, the Commission “encourage[d] ETCs to provide consumers with multiple options for presenting documentation of eligibility, including in person and by mail.”<sup>14</sup> ETCs that have established processes and procedures to verify a consumer’s eligibility for Lifeline benefits during an in-person encounter, whether at a retail store, a community event, or otherwise, are doing precisely what the Commission encouraged them to do. TracFone has offered no legal or factual basis for prohibiting ETCs from providing a consumer with a handset in person once eligibility is confirmed and the consumer makes the necessary certifications.

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<http://www.nationaljournal.com/congress/2-dead-people-got-free-phones-and-1-gop-lawmaker-eyes-an-opening-20130226> (constituents claimed phones were mailed to their dead parents); *see also* website of Congressman Tim Griffin, <http://griffin.house.gov/Lifeline>

<sup>11</sup> Prepared Remarks of FCC Commissioner Clyburn, Consumer Federation of America, Consumer Assembly 2013: Challenges and Opportunities at 2, March 15, 2013 (emphasis added).

<sup>12</sup> *Id.* at 4 (emphasis in the original).

<sup>13</sup> 47 C.F.R. §54.410.

<sup>14</sup> *Lifeline Order* at ¶107.

TracFone alleges that “in-person handset distribution is not an effective consumer outreach method since it invites fraud.”<sup>15</sup> It is not the in-person distribution of handsets that invites fraud. It is the failure to have the proper safeguards in place to verify consumer eligibility that invites fraud. The Commission should reject TracFone’s efforts to conflate the two. The Commission’s rules explicitly prohibit ETCs from receiving Lifeline reimbursement on behalf of a consumer who has not demonstrated eligibility for the service. Whether an ineligible consumer receives a handset by mail, by overnight delivery or in person, an ETC may not request Lifeline reimbursement for service provided to that consumer. Contrary to TracFone’s suggestion, imposing limitations on the manner in which an ETC may provide a handset to a Lifeline consumer will not resolve issues arising from an ETC’s failure to properly verify and confirm the consumer’s eligibility for Lifeline service before seeking reimbursement from USAC. Enforcement of the Commission’s existing rules will. TracFone’s proposed rule is not necessary, nor will it prevent waste, fraud or abuse of Universal Service funds.

The Commission already has efforts underway to further strengthen control and oversight of universal service expenditures that will be far more targeted and effective in stemming the expenditure of Lifeline funds for service to ineligible consumers than TracFone’s proposed rule prohibiting the in-person distribution of handsets. The National Lifeline Accountability Database, which the Commission is in the process of implementing, will allow ETCs to determine whether a Lifeline applicant or anyone in the applicant’s household is already receiving Lifeline benefits. ETCs operating in states that do not have comprehensive systems in place to prevent duplicative Lifeline support will be required to query the National Lifeline

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<sup>15</sup> TracFone Petition at 6.

Accountability Database.<sup>16</sup> Once the National Lifeline Accountability Database is up and running, the problem of duplicate support should be eliminated.

The Commission has also solicited comments on establishing a national database that will allow verification of a consumer's initial or ongoing eligibility for Lifeline benefits from government sources.<sup>17</sup> Indeed, the Commission has directed the Wireline Competition Bureau and USAC "to take all necessary action so that, as soon as possible, and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common [benefit] programs through which consumers qualify for Lifeline."<sup>18</sup>

Together, the National Lifeline Accountability Database and the Lifeline eligibility database will prevent duplicative support, improve the accuracy of eligibility determinations and ensure that only eligible consumers receive Lifeline benefits while reducing burdens on consumers and ETCs. These initiatives will have a tremendous impact on reducing inefficiencies and abuse of Universal Service funds. In contrast, TracFone's proposed rule will do nothing more than inconvenience otherwise eligible Lifeline consumers who would prefer to obtain their wireless handsets in person rather than through the mail.

## **II. Restricting The Manner In Which Customers Can Obtain Handsets Is Likely To Frustrate The Ability Of The Most Vulnerable Consumers To Obtain Lifeline Service**

In addition to the fact that TracFone's proposed rule prohibiting the in-person distribution of handsets would not reduce waste, fraud and abuse of Universal Service funds, it would also be likely to stymie the delivery of Lifeline benefits to many of society's most vulnerable citizens

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<sup>16</sup> 47 C.F.R. § 54.404.

<sup>17</sup> *Lifeline Order* at ¶¶ 403-415.

<sup>18</sup> *Id.* at ¶403.

who would otherwise qualify for service. TracFone filed its Petition on May 13, 2013. The Commission issued the Public Notice requesting comment on the Petition on May 16, 2013.<sup>19</sup> Less than a week later, two devastating tornadoes ripped through Oklahoma causing severe damage to and even leveling thousands of homes. The tornadoes in Oklahoma are only the latest in a series of natural disasters that have left people homeless and in need more than ever of access to telecommunications services to rebuild their lives. Last fall, superstorm Sandy destroyed or rendered uninhabitable thousands of homes in New York and New Jersey.<sup>20</sup> In the spring of 2011, a tornado nearly wiped Joplin, Missouri off the map, destroying everything in its path.<sup>21</sup> Six weeks after Hurricane Katrina in 2005, the Commission observed that thousands of people were forced to leave their homes because of the hurricane and remained “without telecommunications service, unable to contact loved ones, make new living arrangements or find post-hurricane employment.”<sup>22</sup> It is truly ironic that TracFone’s proposed amendment to the Commission’s rules would deny people displaced by natural disasters who would otherwise

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<sup>19</sup> Public Notice, “Wireline Competition Bureau Seeks Comment on TracFone’s Petition To Amend Lifeline Rules To Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers,” WC Docket No. 11-42, DA 13-1109 (rel. May 16, 2013).

<sup>20</sup> See e.g., Philip Tomlinson, “Lawrence Township Homes Damaged By Superstorm Sandy Face Demolition,” available at [http://www.nj.com/cumberland/index.ssf/2013/05/sandy\\_damaged\\_homes\\_in\\_lawrenc.html](http://www.nj.com/cumberland/index.ssf/2013/05/sandy_damaged_homes_in_lawrenc.html) (last visited June 6, 2013); Rose Arce, “Sandy still bringing down homes, but families vow to be back,” available at <http://edition.cnn.com/2013/04/30/us/new-york-sandy-one> (last visited June 6, 2013).

<sup>21</sup> See e.g., Erin McClam and Erica Hall, NBC News, “While Oklahoma Staggers, Joplin Marks 2 Years After Its Own Tornado,” available at [http://usnews.nbcnews.com/\\_news/2013/05/22/18426022-while-oklahoma-staggers-joplin-marks-2-years-after-its-own-tornado?lite](http://usnews.nbcnews.com/_news/2013/05/22/18426022-while-oklahoma-staggers-joplin-marks-2-years-after-its-own-tornado?lite) (last visited June 6, 2013).

<sup>22</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. Order, FCC 05-178 at ¶¶ 2, 4, 11 (rel. Oct. 14, 2005). In the wake of the Hurricane Katrina, the Commission provided households eligible for individual housing assistance under FEMA rules with temporary Lifeline wireless service. *Id.* at ¶4.

qualify for Lifeline benefits access to those benefits because they no longer have a home address to which a handset could be shipped. Although such a result would be unconscionable, it would be the inevitable consequence of a rule that banned in-person distribution of handsets to qualifying Lifeline customers.

It is not only those otherwise eligible Lifeline customers displaced by natural disasters that would be frustrated by a rule prohibiting ETCs from providing handsets to their customers in person. Potential Lifeline customers who are living in temporary quarters, including shelters, halfway houses, or other group living facilities where they would not be able to receive, or would not feel comfortable receiving, mail would also be adversely affected.<sup>23</sup> Still pending before the Commission is a request by the Veterans Homeless Initiative Office, a division of the Department of Veterans Affairs, to include homeless veterans' programs as qualifying eligibility criteria for Lifeline benefits.<sup>24</sup> In response to the request, the Commission has asked for comment on issues relating to verifying the eligibility of transient and homeless veterans for Lifeline service. Whether or not the Commission ultimately decides to add homeless veterans' programs to the list of qualifying programs for Lifeline service, TracFone's proposed prohibition on the in-person distribution of handsets would create just another obstacle in the path of homeless veterans attempting to get access to the services they need to improve their lives.

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<sup>23</sup> *Lifeline Order* at ¶¶ 87-89 (determining that consumers without permanent addresses should not be precluded from participating in Lifeline). Moreover, low-income consumers choosing wireless service would be placed at a disadvantage as compared to non low-income consumers who can obtain their wireless devices and services by visiting a local retail store. The Commission's technology neutral approach in this program has been an important goal, and should continue to be so. The Commission's eligibility and verification rules are and should be targeted to prevent waste, fraud and abuse. TracFone's proposal that the Commission adopt a rule banning in-person distribution of handsets, which merely would create an additional barrier and further differentiate services available to low-income consumers, should be rejected.

<sup>24</sup> *Lifeline Order* at ¶487.

Because the means of delivery of a handset to a potential Lifeline consumer has no bearing on the eligibility of the consumer for Lifeline service, restricting the means of delivery would neither promote the goals of the program nor minimize waste, fraud and abuse.

**Conclusion**

For the forgoing reasons, COMPTTEL respectfully requests that the Commission deny TracFone's Petition For Rulemaking,

Respectfully submitted,

/s/

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